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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943.

No. 160

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
a Corporation,
Petitioner,

vs.

G. W. BURLEY, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND SUPPORTING BRIEF.

PAUL R. CONAGHAN,
Counsel for Petitioner.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Supreme Court of the United States:

Your petitioner, Elgin, Joliet and Eastern Railway Company, respectfully represents that it is aggrieved by the final judgment of the United States Circuit Court of Appeals for the Seventh Circuit, entered November 10, 1943 (R. 110), reversing the judgment of the District Court of the United States for the Northern District of Illinois, Eastern Division, and remanding the case with instructions to vacate the summary judgment entered by the District Court in favor of your petitioner (R. 113). Your

petitioner is further aggrieved by the order of the said United States Circuit Court of Appeals entered on March 14, 1944 (Mr. Justice Kerner dissenting), denying the petition for rehearing in this case (R. 129).

A.

Summary and Short Statement of the Matter Involved.

In an amended complaint filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, on the 2nd day of November, 1942 (R. 96), the respondents alleged diversity of citizenship and sought to recover from your petitioner damages for violation of a labor agreement between your petitioner and the Brotherhood of Railroad Trainmen. All respondents were members of the Brotherhood (R. 4). The respondents claim violation of the labor agreement with reference to the starting time of certain crews in the Whiting (Indiana) switch yard of your petitioner and that as a result of such alleged violation, each respondent (R. 5) is "entitled to pay for an additional day, at time and one-half, at the regular daily rate from August 26, 1934, to and including November 14, 1938, for each foreman and each helper, for each day they were required to work in yard service in the 'Whiting Yard' of the defendant, in accordance with the established practice among railroads and employees thereof and as provided in Article 6 of said agreement as aforesaid."

Your petitioner filed a motion to dismiss the original complaint (R. 9-39 inclusive) and also a motion for summary judgment (R. 42). The District Court rendered summary judgment for your petitioner (R. 84), from which an appeal was taken to the Circuit Court of Appeals (R. 85-86).

The Circuit Court of Appeals reversed the judgment of the District Court because of jurisdictional defects relating to diversity of citizenship (*Alderman* v. *Elgin, Joliet and Eastern Railway Company*, 125 F. 2d 971). In its directions, however, the Circuit Court of Appeals permitted the District Court to allow amendments to cure the jurisdictional defects. The amended complaint curing the jurisdictional defects thereafter was filed by the respondents in the District Court (R. 96-98). The District Court again entered summary judgment for your petitioner (R. 99-100). The respondents again appealed to the Circuit Court of Appeals. That Court in its opinion (R. 113) found that the "record affirmatively shows there was an issue of fact" which should have been submitted to the jury and that "the motion for summary judgment should not have been granted" by the District Court. The judgment of the District Court again was reversed and the cause remanded with instructions.

Your petitioner moved to dismiss (R. 9, 99) and for summary judgment (R. 42, 100) for the reasons that (1) the Brotherhood of Railroad Trainmen, the exclusive bargaining representative for the respondents, and of which all of the respondents were members, settled the matter in dispute by written agreement on October 31, 1938 (R. 16-23), (2) the said written agreement released all claims of the respondents against your petitioner arising out of the alleged violation of Article 6 of the labor agreement between the Brotherhood and your petitioner and (3) the decision of the National Railroad Adjustment Board, First Division, on September 6, 1940 (R. 26-39) denying the claim of the Brotherhood for the alleged violation of Article 6 of the labor agreement is "final and binding" upon the respondents.

B.

Statement of the Basis upon Which It Is Contended That This Court Has Jurisdiction to Reverse the Judgment of the United States Circuit Court of Appeals for the Seventh Circuit.

The jurisdiction of this Court to grant this petition for a writ of certiorari is invoked by Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 USCA 347).

The petition for rehearing was denied by the Circuit Court of Appeals (Mr. Justice Kerner dissenting) on March 14, 1944 (R. 129). The time for filing this petition for a writ of certiorari begins from the date the petition for rehearing was denied (28 USCA 350). *Aspen Mining and Smelting Co.* v. *Billings,* 150 U. S. 31; *Gypsy Oil Co.* v. *Escoe,* 275 U. S. 498; *Department of Banking* v. *Pink,* 317 U. S. 264.

The decision of the Circuit Court of Appeals in this case considers only the question of agency existing between the respondents and the representatives of the Brotherhood of Railroad Trainmen as a question arising at common law. This is reversible error. The claims of the respondents against your petitioner cannot rightfully be considered apart from the mandatory provisions of the Railway Labor Act. The opinion of the Circuit Court of Appeals ignored the provisions of that Act. The issues in this case necessarily involve a construction of the Railway Labor Act and the effect of the award for your petitioner made by the Adjustment Board created by that Act.

Whether the District Court correctly entered summary judgment for your petitioner depends upon whether the award of the Adjustment Board is "final and binding."

The District Court found that the award of the Adjustment Board for your petitioner was final and binding *as a matter of law.* That finding was the *ratio decidendi* of its opinion (R. 83). Therefore, in the opinion of the District Court there was no disputable question of fact rightly presented for jury determination. The Circuit Court of Appeals did not even pass upon the issue. If the award of the Adjustment Board is "final and binding" *as a matter of law,* as is expressly provided by the Railway Labor Act (Sec. 153(m) 45USCA), the District Court correctly rendered summary judgment for your petitioner and that judgment should have been affirmed by the Circuit Court of Appeals.

The question whether awards of the Adjustment Board are "final and binding" has not been, but should be, passed upon by this Court. This question is a federal question of substance and of such importance to all of the railroads in the United States and to the proper exercise of jurisdiction by District Courts that this Court should grant this petition for a writ of certiorari.

If the decision of the Circuit Court of Appeals in this case is not reversed, collective bargaining will be destroyed. Railroads will find it impossible to conduct their operations unless they treat directly with their employees regarding matters of grievance, in order to be assured that settlements with the duly authorized representatives of the employees will not be upset by the niceties of the law of agency. Such direct bargaining is demanded by the decision of the Circuit Court of Appeals in this case. The result will be destruction of the policy created by the Railway Labor Act and conflict with the decisions of this Court prohibiting individual dealing with employees as announced in the cases of *The Order of Railroad Telegraphers* v. *Railway Express Agency,* 64 S. Ct. 582 and *J. I. Case Co.* v. *National Labor Relations Board,* 64 S. Ct. 576.

The decision of the Circuit Court of Appeals in this case is not only a decision of a federal question in conflict with the decisions of this Court but also a decision in conflict with decisions of other circuit courts of appeal. (*Washington Terminal Co.* v. *Boswell,* 124 F. 2d 235, CCA-D.C., 63 S. Ct. 1430; *Division 525, Order of Railway Conductors of America* v. *Gorman, et al.,* 133 F. 2d 273, CCA 8, 1943; *Virginian Railway Co.* v. *System Federation No. 40,* 131 F. 2d 840, 844, 300 U. S. 515, 548; *Smith et al.* v. *Texas & N. O. R. Co.,* 32 F. Supp. 1013, 118 F. 2d 75; *System Federation* v. *Louisiana Ry. Co.,* 30 F. Supp. 909, 32 F. Supp. 89, 119 F. 2d 509). The decision sought to be reviewed so far departs from the accepted and usual course of judicial proceedings and thereby so far sanctions such departure by district courts as to demand the exercise of the power of supervision by this Court in granting this petition for a writ of certiorari.

The dispute in this case between the respondents, the Brotherhood of Railroad Trainmen and your petitioner is not unlike a jurisdictional controversy between unions which this Court in *Switchman's Union of North America* v. *National Mediation Board,* 64 S. Ct. 95, *General Committee* v. *Southern Pacific R. R. Co.,* 64 S. Ct. 142, and *General Committee* v. *M. K. & T. R. R. Co.,* 64 S. Ct. 146, held not to be a justiciable controversy within the meaning of the Railroad Labor Act. If courts are without power to declare a union agreement void because the labor union which negotiated it was claimed by the plaintiffs not to be authorized to represent the employees, as in the case of *General Committee* v. *M. K. & T. R. R. Co.,* 64 S. Ct. 146, then courts are without power to adjudicate where, as in this case, a group of employees claim that representatives of the union have exceeded their authority in executing a compromise agreement relating to grievances of the particular group and the Adjustment Board, following

the expressed provisions of the Railway Labor Act, has decided that the compromise agreement made by representatives of the union was a bar to the claims of the particular employees. If the Railway Labor Act prohibits courts from declaring where the jurisdiction of one craft ends and the authority of another begins with respect to the rights of collective bargaining, *a fortiori*, courts have no power to pass upon the question of the limitations, if any, upon the acts of collective bargaining representatives within the unquestioned limitations of the jurisdiction of such representatives after the Railroad Adjustment Board has passed upon the exercise of such jurisdiction, as in this case, and has found that the settlement made by such representatives is conclusive. If courts are without power to adjudicate where the representatives are not authorized by the Mediation Board to represent at all, then courts have no power to declare a settlement agreement void because the representatives have improperly represented a particular group of employees, especially after the Adjustment Board has declared otherwise. If courts may not make a determination between the conflicting claims of labor unions for representation, then the provisions of the Railway Labor Act prohibit the power of courts to be exercised with reference to a particular group of employees within a labor organization, after the Adjustment Board has made its award, except as defined by the procedural sections of the Railway Labor Act.

The question whether authorized representatives of the Brotherhood of Railroad Trainmen or any other labor organization have the power to settle grievances by a written compromise agreement and the power of the Adjustment Board to deny relief, because of such compromise agreement, so that the legal effects of such a settlement and award of the Adjustment Board will be "final and binding" upon the employees and the company, re-

mains unsettled by the decision of the Circuit Court of Appeals in the case at bar. If employees affected by the compromise agreement and award may repudiate such agreement and award and bring suit in their own name against the railroad, the bargaining relating to grievances of necessity will cease to be collective and will be forced to be individual. This will break down the expressed purpose for which Congress passed the Railway Labor Act. (*Virginian Railway Co.* v. *Federation*, 300 U. S. 515, 548.) As a matter of self-protection, railroads will be forced to deal individually with employees regarding matters relating to rules, rates of pay and working conditions, thus violating the policy declared by the Railway Labor Act which imposes "the affirmative duty to treat only with the true representative and, hence, the negative duty to treat with no other" (*Virginian Railway Co.* v. *Federation*, 300 U. S. 515-548).

If your petitioner and other railroads may not treat with authorized representatives of the Brotherhood of Railroad Trainmen or of other unions *unless and until* "the authority of the so-called agents of the plaintiffs to negotiate, compromise, and settle plaintiffs' claims . . ." (opinion of Circuit Court of Appeals, R. 112) has been clearly established with respect to each particular employee affected, the stopping of each collective bargaining conference for the purpose of establishing agency between collective bargaining representatives and each particular employee will render collective bargaining illusory.

If courts by circuitous reasoning may ignore the expressed findings of the Adjustment Board, as did the Circuit Court of Appeals in the case at bar, the policy of Congress "to settle disputes" promptly and to obtain decisions from the Adjustment Board which are "final and binding", as expressed in the Railway Labor Act, is rendered completely ineffective.

This Court should exercise its jurisdiction by granting this petition for a writ of certiorari not merely to determine whether the Circuit Court of Appeals improperly applied principles of common law agency when it should have applied the clear and mandatory provisions of the Railway Labor Act but also for the purpose of pronouncing legal principles that should be applied by all courts when the Adjustment Board has made its award denying a claim presented by the Brotherhood of Railroad Trainmen or any other labor organization, and the railroad contends that the award is "final and binding" in accordance with the provisions of Sec. 153(m) of the Railway Labor Act.

The question presented by this petition is not one of mere applicability of well settled rules of law. The question relates to what basic principles should be applied by courts generally when representatives of a railroad have conferred with representatives of the Brotherhood of Railroad Trainmen or of any other union to settle matters of grievance and settle them by a written agreement, (as found by the award of the Adjustment Board, in accordance with the procedure and provisions of the Railway Labor Act), and, notwithstanding the award of the Adjustment Board, a particular group of employees seek to impose liability upon the railroad by a suit at law, contrary to the provisions of the compromise agreement and the award of the Adjustment Board. This question is substantial and important. It should be finally determined by this Court by granting this petition for a writ of certiorari.

C.

The Questions Presented.

1. Whether Sec. 153 (m) of the Railway Labor Act (45 USCA), which refers to awards of the Adjustment Board, an administrative tribunal created by that Act,

and which in part provides that "the awards shall be final and binding upon both parties to the dispute . . ." apply (to the facts in this case) when representatives of the carrier and the representatives of the Brotherhood have settled a particular dispute by a written compromise agreement (as found by the Adjustment Board), or whether some employees, regardless of such award of the Adjustment Board, have the right to bring suit at law against the carrier because of the same grievance with reference to which the Adjustment Board denied relief.

2. Whether carriers, notwithstanding the provision of the Railway Labor Act imposing the duties upon representatives of the carrier and of the Brotherhood "to settle all disputes" and, as regards the carriers, "to treat" with the designated representatives of the employees, are required at their peril to ascertain that the designated representatives of the employees have been in fact appointed as agents of each particular employee involved in the settlement to make the particular settlement in question.

3. Whether employees of a carrier, nowithstanding the *limited* provisions for court review in the Railway Labor Act and a decision of the Adjustment Board in favor of the carrier, may, nevertheless, obtain *unlimited* court review of the same subject matter of the dispute passed upon by the Adjustment Board by filing in court a separate suit in their own names.

4. Whether designated representatives of employees empowered to act in the presentation of a claim before the Adjustment Board have, by the very nature of their office, implied authority to compromise the claim in such a manner as to bind each and every employee affected by the compromise.

5. Whether courts have power to decide controversies between employees and a railroad (in an independent

action at law for damages arising from alleged violation of the provisions of a labor agreement) when the Adjustment Board, created by the Railway Labor Act, has already passed upon the merits of the dispute and has rendered an award in favor of the railroad.

6. Whether courts are outsted of power to exercise their jurisdiction in a suit filed by employees against a railroad when the Adjustment Board has passed upon the same subject matter of the suit and has rendered an award in favor of the railroad.

7. Whether respondents, who have received an adverse decision by the Adjustment Board and, consequently, are prevented from appealing to the courts from such an adverse award because of the lack of such remedy in the provisions of the Railway Labor Act, and, notwithstanding the provisions of that Act for *limited* court review, my obtain indirectly *unlimited* court review by filing a new suit at law for damages alleging the same facts as submitted to the Adjustment Board for adjudication.

8. Whether awards of the Adjustment Board, not involving money awards, are "final and binding."

9. Whether a jury question is presented when a railroad relies upon an award of the Adjustment Board in its favor and contends that such award is "final and binding" upon the parties and subject matter of the controversy.

10. Whether the rule of the Circuit Court of Appeals in this case that the power of designated representatives to bind employees "depends upon the authority of the so-called agents of the plaintiffs to negotiate, compromise and settle plaintiffs' claims" shall prevail as distinguished from the universal practice of implied authority in matters pertaining to collective bargaining in a case wherein

"the plaintiffs admit they authorized the bargaining agents to negotiate and settle the question of what the defendant was going to do about the observance of Article 6" of the labor agreement (Opinion of Circuit Court of Appeals, R. 112).

11. Whether a railroad which for many years has made many collective bargaining compromise settlements with representatives of the Brotherhood of Railroad Trainmen, may be ordered by a court to set aside a particular compromise agreement, especially after the Adjustment Board has denied the same claim.

12. Whether courts may ignore the "final and binding" consequences of the award of the Adjustment Board relating to the facts and circumstances in this case.

13. Whether there exists jurisdiction by courts to entertain suits filed by employees against a railroad for damages relating to rates of pay and alleged violation of labor agreements, when the Adjustment Board has already decided that these same claims of the employees should be denied.

14. Whether the claims of the respondents in this case were extinguished by the negotiated compromise agreement of October 31, 1938, apart from the subsequent award of the Adjustment Board finding that the claims of the respondents were so extinguished.

15. Whether the complaint presents a claim upon which relief may be granted and whether the judgment of the District Court that it did not is correct.

D.

Reasons Relied upon for the Allowance of the Writ.

The decision of the Circuit Court of Appeals in this case conflicts with decisions of this Court, of other circuit courts of appeal and of other district courts, as pointed out in Part B of this petition. There should be uniformity of decisions relating to the power of courts to exercise jurisdiction after the Adjustment Board has rendered an award, as in this case. The legal consequences resulting from compromise agreements concluded in collective bargaining negotiations and adjudicated by the Adjustment Board should be clear and certain. Furthermore, when such collective bargaining compromise agreements have been executed and when the Adjustment Board created by the Railway Labor Act has denied the claims of certain employees as a result of the execution of such a compromise agreement, this Court should determine whether the award of the Adjustment Board is "final and binding." The District Court found that the award was "final and binding." The Circuit Court of Appeals did not even refer to the issue in the case.

The lack of the power of courts to pass upon union jurisdictional issues decided by the Mediation Board created by the Railway Labor Act has been clearly delineated by the decisions of this Court in *Switchman's Union of North America* v. *National Mediation Board,* 64 S. Ct. 95, *General Committee* v. *Southern Pacific R. R. Co.,* 64 S. Ct. 142, and *General Committee* v. *M. K. & T. R. R. Co.,* 64 S. Ct. 146.

The lack of power of courts or the extent of such power and the limit of its exercise, when there is an issue of the award of the Adjustment Board being "final and binding," presents questions of importance to railroads and

to labor unions. The legal consequences of an award of the Adjustment Board under the facts and circumstances in this case likewise present substantial questions of importance.

All railroads and labor unions seek guidance. This Court should clarify the many existing uncertainties and conflicts by granting this petition for a writ of certiorari.

Respectfully submitted,

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, *Petitioner.*

PAUL R. CONAGHAN,
Counsel for Petitioner.

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G. W. BURLEY, *et al.*,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Report of Opinion.

The opinion of the Circuit Court of Appeals (R. 110-113) is reported in 140 F. 2d 488.

II.

Statement of the Grounds on Which Jurisdiction of This Court Is Invoked.

The jurisdiction of this Court is invoked in accordance with the provisions of Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 USCA 347) and as more particularly set forth in Part B of the preceding petition.

III.

Statement of the Case.

A concise statement of the case is made in the preceding petition under Part A.

IV.

Specification of Errors Assigned and Intended to be Urged

The Circuit Court of Appeals erred:

1. In reversing the judgment of the District Court and remanding this case to the District Court with instructions.

2. In not affirming the judgment of the District Court in favor of your petitioner.

3. In omitting to pass upon or make any reference to the issue in this case as to whether awards of the Adjustment Board are "final and binding."

4. In exercising its jurisdiction in any respect with reference to the suggested issues. When the Adjustment Board entered its award and denied the claim of the Brotherhood under the facts and circumstances in this

case, the award of the Adjustment Board is "final and binding." Courts lack power to consider as issues *de novo* in a new suit at law the same issues presented before the Adjustment Board.

5. In rendering its decision that whether collective bargaining agents of the Brotherhood of Railroad Trainmen, who for many years have acted for the employees of your petitioner in conducting collective bargaining negotiations, must present to your petitioner evidence of "the authority of the so-called agents of the plaintiffs to negotiate, compromise or settle plaintiffs' claims . . ."

6. In holding that there was presented in this case a disputable question of fact for jury determination when the Adjustment Board had previously passed upon the same issues and rendered its award denying relief.

7. In omitting to find *as a matter of law* that the award of the Adjustment Board was "final and binding" upon the respondents.

V.

ARGUMENT.

A.

The Adjustment Board in its award denied the claim of the Brotherhood for pay at time and one-half from August 27, 1934 until November 14, 1938. That award of the Adjustment Board is final and binding upon the respondents.

The claim of the Brotherhood of Railroad Trainmen filed before the Adjustment Board on behalf of the respondents in this case (all members of the Brotherhood)

was for the alleged violation by your petitioner of Artic
6 of its labor agreement with the Brotherhood and for

> "one days' pay at time and one-half for . . . each da
> they were required to work in yard service in th
> Whiting (Standard Oil Company) Yard . . . from th
> dates of August 27, 1934, until November 14, 193
> inclusive" (R. 26).

The Adjustment Board rendered its award (R. 26 to 3
inclusive) and denied the claim (R. 39). The issue
whether the respondents (as individuals) for the sam
alleged violation and the same claims (R. 5, 98) may obtai
court adjudication by filing an independent action at la
in the District Court alleging diversity of citizenship an
damages in excess of $3000 for each respondent and als
whether the award of the Adjustment Board may be urge
as a bar.

Your petitioner contends that under such facts and ci
cumstances, courts have no power to exercise their juri
diction. The Railway Labor Act expressly limits th
power of courts directly or indirectly to review decisio
of the Adjustment Board. (*Washington Terminal Co*
pany v. *Boswell, et al.*, 124 F. 2d 235, affirmed 63 S. C
1430.) Congress has not given to courts the power t
decide jurisdictional controversies between unions an
railroads (*Switchman's Union of North America* v. *N*
tional Mediation Board, 64 S. Ct. 95, *General Committ*
v. *Southern Pacific R.R. Co.*, 64 S. Ct. 142, *General Co*
mittee v. *M. K. & T. R. R. Co.*, 64 S. Ct. 146. Neither ha
Congress given to courts the power to exercise their juri
diction after the very same issues have been decided b
the Adjustment Board in favor of the railroad relatin
to the facts and circumstances in this case. When Co
gress stated in Section 153(m) of the Railway Labor A
(45 USCA) that awards of the Adjustment Board sha
be "final and binding," provided they are not mone

awards, and provided no court review of such awards when they were in favor of the railroad, the expressed intention of Congress is clear that the existence of jurisdiction by courts generally to entertain other forms of suit on the same issues is denied. *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen, et al.*, 140 F. 2d 35; *Virginian Railway Co.* v. *System Federation No. 40*, 131 F. 2d 840, 844, 300 U. S. 515, 548; *Smith et al.* v. *Texas & N. O. R. Co.*, 32 F. Supp. 1013, 118 F. 2d 75; *Division 25, Order of Ry. Conductors of America* v. *Gorman, et al.*, 133 F. 2d 273; *System Federation* v. *Louisiana Ry. Co.*, 30 F. Supp. 909, 32 F. Supp. 89, 119 F. 2d 509, and *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235, 63 S. Ct. 1430.

Even if courts generally have power to exercise jurisdiction in such cases, courts shall not ignore awards of the Adjustment Board (as did the Circuit Court of Appeals in this case) and must effectuate the clear mandate of Congress as set forth in Sec. 153(m) of the Railway Labor Act that awards of the Adjustment Board are "final and binding." *As a matter of law*, this major issue takes precedence over ancillary issues, real or imagined, which may be before the court for adjudication. When a motion for summary judgment is presented, under such circumstances, the first and *only* question for the court to decide is the manner in which the award of the Adjustment Board may be made "final and binding," as demanded by the Railway Labor Act. This the Circuit Court of Appeals failed to do in the case at bar. For that reason your petitioner prays that a writ of certiorari be issued.

B.

The Decision of the Circuit Court of Appeals Conflicts with the Decisions of this Court and of Other Circuit Courts of Appeal.

In part B of the preceding petition there is pointed out the conflict of the decision of the Circuit Court of Appeals in this case with the decisions of this Court and of other circuit courts of appeal. There should be no such conflict on a question of such importance. This Court should obviate the cause for diversity of opinions by granting the petition for a writ of certiorari in this case.

C.

The Decision of the Circuit Court of Appeals Destroys Collective Bargaining.

There is set forth in part B of the preceding petition, also, the point that if the decision of the Circuit Court of Appeals is not reversed, collective bargaining between representatives of railroads and unions will be destroyed. If railroads in every case must apply common law principles of agency and be certain of "the authority of the so-called agents of the plaintiffs to negotiate, compromise and settle plaintiffs' claims . . ." (Opinion, R. 112), bargaining of necessity will become individual and cease to be collective. The result will violate the provisions of the Railway Labor Act making collective bargaining mandatory. The result also will be contrary to the decisions of this Court that the railroads must treat with the designated representative of the employees and imposing the duty "to treat with no other." (*Virginian Railway Co.* v. *Federation*, 300 U. S. 515.) For this reason alone, the petition for a writ of certiorari should be granted in this

case before the effect of the decision of the Circuit Court of Appeals becomes general.

CONCLUSION.

Apart from the history of the Railway Labor Act, statutory construction and the legalistic argument that might be urged, the judgment of the Circuit Court of Appeals in this case should be reviewed by certiorari because of a "practical concept of what is just."

Furthermore, the harm which will be done by that decision in creating greater confusion among the circuit and district courts regarding the construction of the Act, in subjugating to courts the principles which Congress clearly stated to be immune and independent of judicial legislation, in passing over the terminal point where disposition should be finally made of grievances and the opening of a new field of procedure after processing before the Adjustment Board, in relegating to mere disputation the question whether awards of the Adjustment Board are "final and binding" and in the erosion of true collective bargaining by the impact of technical rules of agency—impel the conclusion that in this case certiorari should be granted.

Respectfully submitted,

PAUL R. CONAGHAN,
Counsel for Petitioner.